

In Re: Rachappa Tippanna

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Court : Mumbai

Decided On : Jan-20-1910

Reported in : (1910)12BOMLR229

Judge : N.G. Chandavarkar and ;Knight, JJ.

Appeal No. : Criminal Application for Revision No. 368 of 1909

Appellant : In Re: Rachappa Tippanna

Judgement :

N.G. Chandavarkar, J.

1. There are decisions of the different High Courts which lay down that no sanction ought to be granted for the prosecution of a person under Section 211 of the Indian Penal Code, unless he has had an opportunity of adducing all his evidence in the matter of the complaint preferred by him. Now, those decisions proceed upon the ground that it is manifestly unjust that any Magistrate ought to grant such sanction on the mere strength of a Police report, without having applied his own judicial mind to the question whether the allegations made in the complaint are true or not. In some of the decisions on the question, it is said, that where a Magistrate grants such sanction, without taking all the evidence which the complainant is willing to adduce, the Magistrate acts without jurisdiction. But, without going so far, I am of opinion that, before granting any sanction under Section 211, the Magistrate ought to observe all the formalities prescribed in

Sections 201-203 of the Code of Criminal Procedure. In other words, he should examine the complainant, and then afterwards he might refer the matter to the Police, and when the Police report is received by him, then he may determine whether the complaint is true or false. That gives him jurisdiction to exercise his discretion and determine the question as to the truth or otherwise of the complaint. There is nothing in the Code of Criminal Procedure which compels a Magistrate in express terms to examine any or all witnesses whom the complainant wishes to adduce, before dismissing a complaint and granting sanction under Section 211i. It may be contrary to justice to do that, but whether it is so or not must depend on the circumstances of each case. In this particular case what the Magistrate did was that he examined the complainant, and then he referred the matter to the Police. The Police made a report, and on this report and the examination of the complainant the Magistrate granted sanction. The Magistrate, I think, had jurisdiction in granting sanction under Section 211, and I see no reason upon the merits to interfere with it. The rule is discharged.

Knight, J.

2. I would not go so far as to say that the numerous decisions referred to, culminating in the Full Bench case of *Queen Empress v. Sheik Beari* ILR (1887) 10 Mad. 232, are wrong on this point; but, I think, they are certainly open to criticism. I concur in the order proposed by my learned colleague in the special circumstances of this case.

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